

ORDINANCE

City of Portland, Tennessee

No. 19-101

SECOND READING

AN ORDINANCE TO ADOPT THE IMPACT FEE STUDY CONDUCTED BY TISCHLERBISE AND TO ADOPT A NEW IMPACT FEE SCHEDULE FOR PARKS, POLICE, AND FIRE

WHEREAS, the City of Portland has the authority to assess development impact fees for fire, parks, and police facilities pursuant to Article II, Section 1 of Chapter 568 of the Private Acts of 1939, as amended by Chapter 123 of the Private Acts of 1970, Chapter 107 of the Private Acts of 1981, and Chapter 31 of the Private Acts of 2003; and

WHEREAS, the protection of the health, safety, and general welfare of the citizens of the City requires that the fire, parks, and police facilities of the City be expanded and improved to meet the demands of new development; and

WHEREAS, the creation of an equitable impact fee system would enable the City to impose a share of the costs of required improvements to the City's fire, parks, and police facilities on those developments that create the need; and

WHEREAS, the City has conducted an impact fee study that has sets forth reasonable methodologies and analyses for determining the impacts of various types of development on the City's fire, parks, and police facilities; and

WHEREAS, the parks, police, and fire impact fees described in this ordinance are based on the impact fee study, and do not exceed the capital costs required to serve the development that will pay the fees; and

WHEREAS, there is both a rational nexus and a rough proportionality between the development impacts created by each type of new development covered by this section and the fire, parks, and police impact fees that such development will be required to pay; and

WHEREAS, this ordinance creates a system by which impact fees paid by impact generating development will be used to expand the City's parks, police and fire facilities, so that the development that pays each fee will receive a corresponding benefit;

NOW, THEREFORE, BE IT ORDAINED by the City of Portland, Tennessee, as follows:

Section 1. Ordinance Number 06-10 shall be repealed in its entirety.

Section 2. Any commercial, institutional, or industrial site development plan reviewed and approved by the Portland Municipal-Regional Planning Commission on or before the date of the passage of this ordinance, shall be subject to the impact fees enforce at the time of the Planning Commission approval.

Section 3. A new Chapter 2: Impact Fees, is added to Title 20 of the Portland Code, as follows:

CITY OF PORTLAND CODE
TITLE 20: MISCELLANEOUS
CHAPTER 2: IMPACT FEES

SECTION

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20-201. Short Title and Applicability.

(1) Short Title.

This chapter may be known and cited as Portland's "Impact Fee Ordinance," and is referred to herein as "this chapter."

(2) Applicability.

The provisions of this chapter shall apply to all of the territory within the corporate limits of the City of Portland.

20-202. Intent.

- (1) The intent of this chapter is to ensure that impact-generating development bears a share of the cost of improvements to the City's fire services, parks, and police protection; to ensure that the share does not exceed the cost of providing such facilities; and to ensure that funds collected from impact-generating development are actually used to construct improvements that serve new development.

- (2) It is not the intent of this chapter to collect any money from any impact-generating development in excess of the actual amount necessary to offset demands generated by that development for the type of facilities for which the fee was paid.

20-203. Definitions.

For the purpose of interpreting this chapter, certain words used herein are defined as follows:

- (1) "Applicant" means the applicant for a building permit for which an impact fee is due pursuant to the provisions of this chapter.
- (2) "Functional population" means a common unit of measure that represents the impact of a development on the City's fire, parks, and police facilities.
- (3) "Impact fee administrator" means the City of Portland employee who shall be primarily responsible for administering the provisions of this chapter, or his or her designee.
- (4) "Impact fee study" means the Impact Fee Study prepared for the City of Portland by TischlerBise and is dated December 2, 2019, or a subsequent similar report.
- (5) "Impact-Generating Development" means any land development or water or wastewater connection designed or intended to permit an increase the number of service units.
- (6) "Commercial" is an establishment primarily selling merchandise, eating/drinking places, and entertainment uses. By way of example, *Commercial / Retail* includes shopping centers, supermarkets, pharmacies, restaurants, bars, nightclubs, automobile dealerships, and movie theaters.
- (7) "Hotel" is a place of lodging that provides sleeping accommodations and may provide supporting facilities such as restaurants, cocktail lounges, meeting and banquet rooms or convention facilities, limited recreational facilities (pool, fitness room), and/or other retail and service shops.
- (8) "Industrial" is an establishment primarily engaged in the production or transportation of goods. By way of example, *Industrial* includes manufacturing plants, printers, material testing, trucking companies, utility substations, power generation facilities, and telecommunications buildings.
- (9) "Institutional" is an establishment including public and quasi-public buildings providing educational, social assistance, or religious services. By way of example, *Institutional* includes schools, universities, churches, daycare facilities, government buildings, and prisons.
- (10) "Office & Other Service" is an establishment providing management, administrative, professional, or business services; personal and health care services. By way of example, *Office and Other Services* includes banks, business offices, assisted living facilities, nursing homes, hospitals, medical offices, and veterinarian clinics.

(11) "Warehouse" is an establishment that are primarily engaged in the storage, wholesale, and distribution of manufactured products, supplies, and/or equipment, excluding bulk storage of materials that are flammable or explosive or that present hazards or conditions commonly recognized as offensive. A warehouse less than 70,000 square feet shall be classified as industrial.

(12) "Service units" means common units of measure of the demand placed on the infrastructure and facilities of the City, including fire, parks, and police functional population.

(13) "Square feet" means gross floor area, defined as the total area of all floors of a primary building and all associated accessory buildings, measured from the external surface of the outside walls, but excluding covered walkways, open roofed-over areas, porches and similar spaces, exterior terraces or steps, chimneys, roof overhangs, and similar features. Excluded areas include basements or attic spaces of less than seven feet in height and vehicular parking and maneuvering areas.

20-204. Fee Determination.

(1) Maximum Allowable Fee.

The City of Portland has conducted an impact fee study to determine the needs for the City as it develops over the next ten years. Said study has determined that for the projected development to cover an equitable share of services offered by the Parks, Police, and Fire Departments. The City of Portland will set the maximum allowable fee, that shall not be exceed without completing and adopting a new impact fee study. The maximum allowable fee rates are as follows:

Maximum Allowable Impact Fee				
Residential Development	Fees per unit			
Development Type	Fire	Parks	Police	Total
Single Family	\$ 1,444	\$ 1,194	\$ 631	\$ 3,269
Multi-Family	\$ 864	\$ 715	\$ 377	\$ 1,956
Nonresidential Development	Fees per 1,000 Square Feet			
Development Type	Fire	Parks	Police	Total
Industrial	\$ 657	\$ -	\$ 192	\$ 849
Warehouse	\$ 478	\$ -	\$ 165	\$ 643
Commercial	\$ 967	\$ -	\$ 1,218	\$ 2,185
Office & Other Services	\$ 1,225	\$ -	\$ 476	\$ 1,701
Institutional	\$ 384	\$ -	\$ 630	\$ 1,014
Hotel (per room)	\$ 241	\$ -	\$ 409	\$ 650

(2) Fee Schedule.

The City of Portland realize that the maximum allowable fee will overburden development if fully implemented as called for in the Study. The City has decided to adopt the enforceable fee on a percentage basis. The City shall adopt impact fees at 38% of the maximum allowable fee. The percentage basis may be changed by two reading of an ordinance setting the new fee. The impact fee schedule shall be set as follows:

Any person who applies for a building permit or a water or wastewater connection for an impact-generating development, except those exempted or preparing an independent fee calculation study, shall pay a fire, parks, and police impact fee in accordance with the following fee schedule prior to the issuance of a building permit. If any credit is due pursuant to section 20-209, the amount of such credit shall be deducted from the amount of the fee to be paid.

Percentage Based Adoption				38%
Residential Development	Fees per unit			
Development Type	Fire	Parks	Police	Total
Single Family	\$ 549	\$ 454	\$ 240	\$ 1,243
Multi-Family	\$ 328	\$ 272	\$ 143	\$ 743
Nonresidential Development	Fees per 1,000 Square Feet			
Development Type	Fire	Parks	Police	Total
Industrial	\$ 250	\$ -	\$ 73	\$ 323
Warehouse	\$ 182	\$ -	\$ 63	\$ 245
Commercial	\$ 367	\$ -	\$ 463	\$ 830
Office & Other Services	\$ 466	\$ -	\$ 181	\$ 647
Institutional	\$ 146	\$ -	\$ 239	\$ 385
Hotel (per room)	\$ 92	\$ -	\$ 155	\$ 247

(3) Uses Not Listed.

If the type of impact-generating development for which a building permit is requested is not specified on the above schedule, the impact fee administrator shall determine the fee on the basis of the fee applicable to the most nearly comparable type of land use on the fee schedule. If the impact fee administrator determines the impact fee administratively and the applicant does not agree with the determination, the applicant may prepare an independent fee calculation study.

(4) Fee Assessed on Primary Use.

In many instances, a particular structure may include auxiliary uses associated with the primary land use. The impact fees are assessed based on the primary land use.

(5) Net Impact of Redevelopment.

If the type of impact-generating development for which a building permit is requested is for a change of land use type or for the expansion, redevelopment, or modification of an existing development, the fee shall be based on the net increase in the fee for the new land use type as compared to the previous land use type.

(6) Net Impact of Expansions.

An impact fee shall be collected on commercial, institutional, industrial, or multi-family structures that expand in building square footage or add additional dwelling units after the passage of this ordinance. The impact fee imposed shall be based on the expansion not the entire structure. For example, a 100,000 square feet industrial building adds 25,000 square feet the impact fee shall be based on the industrial fee for 25,000 square feet or a 4-unit multi-family building adds 2 units, the fee shall be paid for 2-units.

(7) No Refund for Change of Use.

In the event that the proposed change of land use type, redevelopment, or modification results in a net decrease in the fee for the new use or development as compared to the previous use or development, there shall be no refund of impact fees previously paid.

20-205. Exemptions.

The following shall be exempt from the terms of this chapter. An exemption must be claimed at the time of application for a building permit.

(1) Residential Alterations.

Alterations of an existing dwelling unit where no additional dwelling units are created.

(2) Residential Replacement.

Replacement of a destroyed, partially-destroyed or moved residential building or structure with a new building or structure of the same use, and with the same number of dwelling units.

(3) Nonresidential Replacement.

Replacement of destroyed, partially-destroyed or moved nonresidential building or structure with a new building or structure of the same gross floor area and use.

(4) Pre-ordinance Permit Applications.

Any development for which a completed application for a building permit was submitted prior to the effective date of this chapter, provided that the construction proceeds according to the provisions of the permit and the permit does not expire prior to the completion of the construction.

(5) No Waivers: Payment of Fees by City.

Impact fees shall not be waived. In order to promote the economic development of the City or the public health, safety, and general welfare of its residents, the City Council may agree to pay some or all of the impact fees imposed on a proposed development or redevelopment from other funds of the City that are not restricted to other uses. Any such decision to pay

impact fees on behalf of an applicant shall be at the discretion of the City Council and shall be made pursuant to goals and objectives articulated by the City Council.

20-206. Independent Fee Calculation.

The impact fee may be computed by the use of an independent fee calculation study at the election of the applicant, or upon the request of the impact fee administrator, for any proposed land development activity interpreted as not one of those types listed on the fee schedule or as one that is not comparable to any land use on the fee schedule, and for any proposed land development activity for which the impact fee administrator concludes the nature, timing or location of the proposed development makes it likely to generate impacts costing substantially more to mitigate than the amount of the fee that would be generated by the use of the fee schedule.

(1) Cost of Study: Fee.

The preparation of the independent fee calculation study shall be the sole responsibility and cost of the applicant. Any person who requests to perform an independent fee calculation study shall pay an application fee for administrative costs associated with the review and decision on such study.

(2) Content of Study.

The independent fee calculation study shall be based on the same formulas, level of service standards and unit costs for facilities used in the impact fee study, and shall document the methodologies and assumptions used. The scope of the study shall be approved in advance by the impact fee administrator.

20-207. Use of Fees.

(1) Segregation of Funds.

An impact fee fund that is distinct from the general fund of the City is hereby created, and the impact fees received will be deposited in the following interest-bearing accounts of the impact fee fund.

- (a) Fire Impact Fee Account. The fire impact fee account shall contain only those fire impact fees collected pursuant to this chapter plus any interest which may accrue from time to time on such amounts.
- (b) Park Impact Fee Account. The park impact fee account shall contain only those park impact fees collected pursuant to this chapter plus any interest which may accrue from time to time on such amounts.
- (c) Police Impact Fee Account. The police impact fee account shall contain only those police impact fees collected pursuant to this chapter plus any interest which may accrue from time to time on such amounts.

(2) FIFO Accounting.

Monies in each impact fee account shall be considered to be spent in the order collected, on a first-in/first-out basis.

(3) Eligible Expenditures.

The monies in each impact fee account shall be used only for the following:

- (a) To acquire or construct system improvements of the type reflected in the title of the account;
- (b) To pay debt service on any portion of any current or future general obligation bond or revenue bond used to finance facilities or capital equipment of the type reflected in the title of the account, provided that the facilities financed by that portion of the debt have not been included in the calculation of the existing level of service on which the impact fees were based in the most recent impact fee study;
- (c) As described in section 20-208, Refunds; or
- (d) As described in section 20-209, Credits.

(4) Ineligible Expenditures.

The monies in each impact fee account shall not be used for the following:

- (a) Rehabilitation, reconstruction, replacement -or maintenance of existing facilities and capital equipment except to the extent that the projects increase the capacity to serve new development; or
- (b) Ongoing operational costs.

20-208. Refunds.

- (1) Any monies in the impact fee fund that have not been spent within seven (7) years after the date on which such fee was paid shall be returned to the current owners with earned interest since the date of payment.
- (2) Notice of the right to a refund, including the amount of the refund and the procedure for applying for and receiving the refund, shall be sent or served in writing to the present owners of the property within thirty (30) days of the date the refund becomes due. The sending by regular mail of the notices to all present owners of record shall be sufficient to satisfy the requirement of notice.
- (3) The refund shall be made on a pro rata basis, and shall be paid in full within ninety (90) days of the date certain upon which the refund becomes due.
- (4) If an applicant has paid an impact fee required by this chapter and the building permit later expires without the possibility of further extension, and the development activity for which the impact fee was imposed did not occur and no impact has resulted, then the applicant who paid such fee shall be entitled to a refund of the fee paid, without interest. In order to be eligible to receive such refund, the applicant who paid such fee shall be required to submit an application for such refund within thirty (30) days after the expiration of the permit or extension for which the fee was paid.

- (5) At the time of payment of any impact fee under this chapter, the impact fee administrator shall provide the applicant paying such fee with written notice of those circumstances under which refunds of such fees will be made. Failure to deliver such written notice shall not invalidate any collection of any impact fee under this chapter.
- (6) The City shall be entitled to retain two percent (2%) of the amount of any refund to cover the administrative costs of processing refunds.

20-209. Credits.

Credit against the fire, parks, and police impact fees shall be provided for contributions toward the cost of fire, parks, and police facilities, respectively.

(1) Effective Upon Acceptance.

Approved credits shall generally become effective when the improvements have been completed and have been accepted by the City Council under the provisions of a prior agreement.

(2) Land Valuation.

Credit for dedication of land for fire, parks, or police facilities shall be based on the value of the land to be dedicated. The value of any land required to be dedicated during the subdivision process shall be based upon the "fair market value" of the land at the time of filing the final plat. The value of any land required to be dedicated as part of a rezoning or other approval shall be based on the value of the land at the time of the application for the approval. The value shall be determined by a certified appraiser who is selected and paid for by the applicant, and who uses generally accepted appraisal techniques. If the City disagrees with the appraised value, the City may engage another appraiser at the City's expense, and the value shall be an amount equal to the average of the two appraisals. If either party rejects the average of the two appraisals, a third appraisal shall be obtained, with the cost of such third appraisal being borne by the party rejecting the average. The third appraiser shall be selected by the first two appraisers, and the third appraisal shall be binding on both parties. Approved credits for dedicated land shall become effective when the land has been conveyed to the City and has been accepted by the City.

(3) Construction Costs.

In order to receive credit for fire, parks, and police improvements, the developer shall submit complete engineering drawings, specifications, and construction cost estimates to the impact fee administrator. The impact fee administrator shall determine the amount of credit due based on the information submitted, or where such information is inaccurate or unreliable, then on alternative engineering or construction costs acceptable to the impact fee administrator.

(4) Developers Agreement.

To qualify for an impact fee credit, the developer must enter into an agreement with the City as approved by the City Council. The developer agreement shall specify the amount of the credit, how the credit will be allocated within the development, and whether and

how the developer will be reimbursed for any excess credit beyond the impact fees that would otherwise be due from the development.

(5) Allocation of Credits Within a Development.

Unless otherwise specified in a developer agreement, in the event that the impact-generating development for which credits have been issued is sold to different owners, the credits usable by each new owner shall be calculated in terms of a percentage of the impact fees that would otherwise be due from the entire development. If the total amount of development is not known, the maximum potential development under existing development regulations shall be assumed. This percentage reduction will be applied to all impact fees assessed within the development until the total amount of the credits is exhausted or the development is completed, whichever occurs first.

(6) Credits Run With the Land.

Unless otherwise specified in a developer agreement, the right to claim credits shall run with the land and may be claimed only by owners of property within the development for which the land was dedicated or the improvement was made. Credits issued for a particular development shall not be transferable to another development.

(7) Expiration of Credits.

Credits provided pursuant to this chapter shall be valid from the effective date of such credits until ten (10) years after such date or until the last date of construction within the development or project for which the credits were issued, whichever occurs first.

(8) Pre-Ordinance Credits.

Applicants may also obtain credits for improvements completed prior to the effective date of this chapter, and may use such credits to reduce the impact fees due after the effective date of this chapter within the same impact-generating development for which the credits were issued. Application for such credits must be made, on forms provided by the City, within one (1) year after the effective date of this chapter. In the event that the impact-generating development for which the credits are claimed is partially completed, the amount of the credits shall be reduced by the amount of the impact fees that would have been charged for the completed portion of the development had this chapter been in effect. In the event that the entire impact-generating development project has been completed, no credits shall be issued.

(9) Must be Claimed.

The use of credits must be claimed at the time of application for a building permit. Any right to credit not so claimed shall be deemed to be waived.

20-210. Miscellaneous Provisions.

(1) Developer Exactions.

Nothing in this chapter shall restrict the City from requiring the construction of reasonable improvements required to serve the development project, whether or not such improvement are of a type for which credits are available under section 20-209, Credits.

(2) Record-Keeping.

The impact fee administrator shall maintain accurate records of the impact fees paid, including the name of the person paying such fees, the project for which the fees were paid, the date of payment of each fee, the amounts received in payment for each fee, and any other matters that the City deems appropriate or necessary to the accurate accounting of such fees. Records shall be available for review by the public during normal business hours and with reasonable advance notice.

(3) Programming of Funds.

The City's capital improvements program shall assign monies from each impact fee fund to specific projects and related expenses for eligible improvements of the type for which the fees in that fund were paid. Any monies, including any accrued interest, not assigned to specific projects within such capital improvements program and not expended pursuant to section 20-208, Refunds, or section 20-209, Credits, shall be retained in the same impact fee fund until the next fiscal year.

(4) Correction of Errors.

If an impact fee has been calculated and paid based on a mistake or misrepresentation, it shall be recalculated. Any amounts overpaid by an applicant shall be refunded by the impact fee administrator to the applicant within thirty (30) days after the acceptance of the recalculated amount, with interest since the date of such overpayment. Any amounts underpaid by the applicant shall be paid to the impact fee administrator within thirty (30) days after the acceptance of the recalculated amount, with interest since the date of such underpayment. In the case of an underpayment to the impact fee administrator, the City shall not issue any additional permits or approvals for the project for which the impact fee was previously underpaid until such underpayment is corrected, and if amounts owed to the City are not paid within such thirty (30) 'day period, the City may also rescind any permits issued in reliance on the previous payment of such impact fee.

(5) Periodic Updates.

The impact fee schedules and the administrative procedures established by this chapter shall be reviewed at least once every three (3) years.

20-211. Appeals.

Any determination made by the impact fee administrator charged with the administration of any part of this chapter may be appealed to the City Council within thirty (30) days from the date of the decision to be appealed.

20-212. Violation.

Furnishing false information on any matter relating to the administration of this chapter, including without limitation the furnishing of false information regarding the expected size, use, or impacts from a proposed development, shall be a violation of this chapter.

20-213. Severability.

If a provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the division that can be given effect

without the invalid provision or application, and to this end the provisions of this chapter are severable.

Section 4. The Capital Improvement Plan and Impact Fee Report, labeled as Exhibit A, shall be adopted as if a part of this Ordinance. The Report shall be referenced for questions related to the collection, and enforcement of the impact fee, including but not limited to defining the types of development.

Section 5. That all ordinances in conflict herewith are repealed to the extent of said conflict. That this Ordinance shall take effect from and after its passage on final reading, the public welfare requiring it.

Notice of the Public Hearing was published in the Portland Sun on December 10, and Portland Leader on December 11, 2019.

The Public Hearing was held on January 6, 2020 at 5:00 PM in the City Council Chambers.



Mike Callis, Mayor



Patricia Keen, City Recorder

Passed First Reading: December 2, 2019
Passed Second Reading: January 6, 2020